

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
HEALING POWER INC.,

Plaintiff,

-against-

**ACE CONTINENTAL EXPORTS.
LIMITED, et al.,**

Defendants.
-----X

**REPORT AND
RECOMMENDATION**

07-CV-4175 (NGG)

ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

Currently pending before this Court is a letter-request dated April 28, 2008 (“4/28/08 Letter”), from counsel for plaintiff Healing Power, Inc. (“plaintiff”), seeking a recommendation from this Court that default judgments be entered against defendants Ace Continental Exports Limited (“Ace”) and Ramchandra Damle, a/k/a Ram Bhat Damle (collectively, “defendants”). For the reasons that follow, the motion is granted, based on defendants’ abandonment of their defense of this action and violations of court orders.

FACTUAL BACKGROUND

On October 5, 2007, defendants, through the law firm of Sills, Cummis & Gross, P.C. (“Sills Cummis”), removed this breach of contract case from state court, based on diversity of citizenship. Defendants, who are citizens of the United Kingdom, answered the complaint and asserted counterclaims for declaratory and injunctive relief.

At an initial conference on November 16, 2007, this Court set a discovery schedule. Two months later, on January 25, 2008, Sills Cummis moved to withdraw as counsel to defendants. The basis for the motion was defendants’ failure to provide Sills Cummis with

discovery documents and information, failure to pay counsel fees, and defendants' direction, through their English solicitors, that Sills Cummis immediately stop all work in connection with this action. Defendants reportedly ceased all communications with Sills Cummis in January 2008. On February 8, 2008, after defendants failed to respond to a January 25th Order To Show Cause issued by the Honorable Nicholas G. Garaufis, he granted Sills Cummis' motion to withdraw.

On March 26, 2008, plaintiffs wrote to the undersigned magistrate judge and advised that they had heard nothing further from defendants or any attorney acting on their behalf. The follow week, this Court directed defendants to show cause, in writing, by April 14, 2008, why default judgments should not be entered against them. See 3/31/08 Order To Show Cause. The Court noted that defendants had apparently abandoned their defense of this action, and that Ace, as an entity, was not permitted to proceed *pro se* in federal court.¹ Id. Defendants were expressly warned that their failure to serve and file timely responses to that Order To Show Cause would likely result in a recommendation that default judgments be entered against them. Id. Although served with the Order To Show Cause,² defendants did not respond, nor have they taken any further steps to defend this action. See 4/28/08 Letter.

¹ See Eagle Assocs. v. Bank of Montreal, 926 F.2d 1305, 1308-10 (2d Cir. 1991) (court did not abuse its discretion in entering a default judgment against an entity that failed to comply with the court's order to obtain counsel).

² See Affidavit of Service, filed April 2, 2008.

CONCLUSION

Defendants have repeatedly ignored court orders and, after discharging their counsel, have done nothing to defend this action or prosecute their counterclaims. Defendants were expressly warned of the consequences of ignoring this Court's Order To Show Cause. With knowledge of those consequences, they have abandoned their defense of this case. This Court therefore recommends that default judgments be entered against them and that their counterclaims be dismissed with prejudice for lack of prosecution.

Any objections to the recommendations contained in this Report and Recommendation must be filed with the Honorable Nicholas G. Garaufis on or before May 23, 2008. Failure to file objections in a timely manner may waive a right to appeal the District Court order. See 28 U.S.C. §636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72; Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989).

The Clerk is directed to enter this Report and Recommendation into the ECF system and to mail copies to defendants and their English solicitors at the following addresses:

Ramchandra Damle
Rays House
North Circular Road
London NW10 7XP
The United Kingdom

Ace Continental Exports Limited
Rays House
North Circular Road
London NW10 7XP
The United Kingdom

Charles Russell, LLP
8-10 New Fetter Lane
London EC4A 1RS
The United Kingdom

SO ORDERED.

**Dated: Brooklyn, New York
May 1, 2008**

**ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE**